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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/606,987	06/26/2003	Marc Christian Davis	DWP-1	5142
7590	07/13/2004			
Monty Simmons Simmons Patents Post Office Box 1560 Lenoir, NC 28645			EXAMINER GRAHAM, MARK S	
			ART UNIT 3711	PAPER NUMBER

DATE MAILED: 07/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

YW

<b>Office Action Summary</b>	<b>Application No.</b> 10/606,987	<b>Applicant(s)</b> DAVIS ET AL.	
	<b>Examiner</b> Mark S. Graham	<b>Art Unit</b> 3711	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 04 June 2004.  
 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.  
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-31 is/are pending in the application.  
     4a) Of the above claim(s) 26-31 is/are withdrawn from consideration.  
 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
 6) ☒ Claim(s) 1-25 is/are rejected.  
 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
 8) ☒ Claim(s) 1-31 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \*    c) ☐ None of:  
         1. ☐ Certified copies of the priority documents have been received.  
         2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
         3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
     \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>6/26/03</u> . | 6) <input type="checkbox"/> Other: _____  |

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Applicant's election without traverse of the article claims on 6/4/04 is acknowledged.

Claims 26-31 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected method, there being no allowable generic or linking claim. Election was made **without** traverse on 6/4/04.

Claim 17 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 17 it is recited that the first second and third portions are disposed apart from each other. However, base claim 13 states that each of these portions is bonded to one another leaving the intent of the claim unclear.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 6, 7, 13-16, and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Bender et al. (Bender). Note Bender at Col. 5, lines 16-19 specifically and the entire disclosure generally.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bender in view of Cook. Bender discloses the claimed device with the exception of the “apart” limitation. However, as disclosed by Cook it is known in the art to vary the density of the bat along the longitudinal axis of the bat by creating separate sections apart from one another. It would have been obvious to one of ordinary skill in the art to have done the same with Bender’s laminated sections to tailor the bat to a particular batter’s needs.

Claims 8 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bender in view of Winterowd et al. (Winterowd). Bender discloses the claimed device with the exception of the type of bonding agent used. However, as disclosed by Winterowd bonding agents such as that claimed are known in the woodworking art for bonding laminates. It would have been obvious to one of ordinary skill in the art to have used such as Bender’s bonding agent to provide a secure bond.

Claims 9, 10, 22, and 23 are are rejected under 35 U.S.C. 103(a) as being unpatentable over Bender in view of Burns et al. (Burns). Bender discloses the claimed device with the exception of the sealant/protectant. However, as disclosed by Burns sealant/protectants such as that claimed are known for use on bats. It would have been obvious to one of ordinary skill in the art to have used such on Bender’s bat to protect it.

Claims 11, 19, 20, and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bender. Concerning claims 11 and 24, Bender does not specify a wood type for his bat. However, the examiner takes official notice that the woods claimed are commonly known and used in the art and would obviously have been suitable as Bender’s wood.

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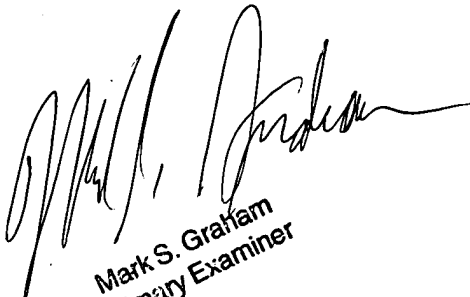
Regarding claims 19 and 20, Bender does not specify the thickness of the lamina his outer (second and third) portions. However, he does disclose the inner lamina are of the claimed thickness and it would have been obvious to one of ordinary skill in the art to have used the same thickness when constructing Bender's alternate embodiment bat to simply the step of cutting the lamina.

Claims 12, and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bender in view of You. Bender uses wood for his laminations. However, as disclosed by You it is known in the art to use composites for such laminations as well. It would have been obvious to one of ordinary skill in the art to have used the same on Bender's bat to add strength to it.

Sadenwater, Smith, Young et al., Hillerich, Brown, Chen et al., Holman, Rastetter, Johnson, Baum, and Shimizu have been cited for interest because they disclose similar bats.

Any inquiry concerning this communication should be directed to Mark S. Graham at telephone number 703-308-1355.

MSG  
7/6/04



Mark S. Graham  
Primary Examiner